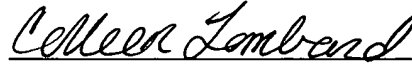


PATENT  
ATTORNEY DOCKET NO. 50125/084002Certificate of Mailing: Date of Deposit: June 20, 2006

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Colleen Lombard

Printed name of person mailing correspondence



Signature of person mailing correspondence

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eggert Stockfleth

Confirmation No.: 7550

Serial No.: 10/574,422

Art Unit:

Filed: April 4, 2006

Examiner:

Customer No.: 21559

Title: THE USE OF A POLYPHENOL FOR THE TREATMENT OF A  
CANCEROUS OR PRE-CANCEROUS LESION OF THE SKINMail Stop PCT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450SUBMISSION OF INTERNATIONAL PRELIMINARY EXAMINATION REPORT

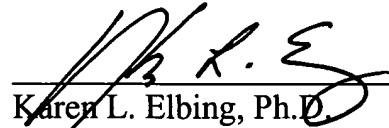
Applicant submits herewith the International Preliminary Examination Report corresponding to the above-referenced application. Applicants petition for any necessary extensions of time for submission of this document.

In addition, if there are any charges, or any credits, please apply them to Deposit

Account No. 03-2095.

Respectfully submitted,

Date: 20 June 2006

  
\_\_\_\_\_  
Karen L. Elbing, Ph.D.  
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From the INTERNATIONAL BUREAU

**PCT**

NOTIFICATION CONCERNING  
TRANSMITTAL OF COPY OF INTERNATIONAL  
PRELIMINARY REPORT ON PATENTABILITY  
(CHAPTER I OF THE PATENT COOPERATION  
TREATY)

(PCT Rule 44bis.1(c))

To:

BÖSL, Raphael  
Isenbruck Bösl Hörschler Wichmann Huhn  
Prinzregentenstrasse 68  
81675 München  
ALLEMAGNE

Date of mailing (day/month/year)  
20 April 2006 (20.04.2006)

Applicant's or agent's file reference  
M62438PC

**IMPORTANT NOTICE**

International application No.  
PCT/EP2004/011300

International filing date (day/month/year)  
08 October 2004 (08.10.2004)

Priority date (day/month/year)  
09 October 2003 (09.10.2003)

Applicant  
MEDIGENE AG et al

The International Bureau transmits herewith a copy of the international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)

Isenbruck | Bösl | Hörschler |  
Wichmann | Huhn, Patentanwälte  
Postfach 880 890  
D-81635 München

26. April 2006

Frist: 09.05.06 PCT 3,1  
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The International Bureau of WIPO  
34, chemin des Colombettes  
1211 Geneva 20, Switzerland

Authorized officer

Ellen Moyse

Facsimile No.+41 22 740 14 35

Facsimile No.+41 22 338 89 75

# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference M62438PC	<b>FOR FURTHER ACTION</b>	See item 4 below
International application No. PCT/EP2004/011300	International filing date ( <i>day/month/year</i> ) 08 October 2004 (08.10.2004)	Priority date ( <i>day/month/year</i> ) 09 October 2003 (09.10.2003)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant MEDIGENE AG		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).																								
2.	This REPORT consists of a total of 7 sheets, including this cover sheet.  In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 60%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application
<input checked="" type="checkbox"/>	Box No. I	Basis of the report																							
<input type="checkbox"/>	Box No. II	Priority																							
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability																							
<input type="checkbox"/>	Box No. IV	Lack of unity of invention																							
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement																							
<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited																							
<input type="checkbox"/>	Box No. VII	Certain defects in the international application																							
<input checked="" type="checkbox"/>	Box No. VIII	Certain observations on the international application																							
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 10 April 2006 (10.04.2006)
Facsimile No. +41 22 740 14 35	Authorized officer  <div style="text-align: center; font-weight: bold;">Ellen Moyse</div>
Telephone No. +41 22 338 89 75	

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2004/011300

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**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	30-34
	No: Claims	1-29,35
Inventive step (IS)	Yes: Claims	
	No: Claims	1-35
Industrial applicability (IA)	Yes: Claims	1-35
	No: Claims	

2. Citations and explanations

see separate sheet

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**Box No. VI Certain documents cited**

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1. Certain published documents (Rules 43bis.1 and 70.10)

and /or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

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**Box No. VIII Certain observations on the international application**

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The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**Section V**

1. Reference is made to the following documents:

- D1: WO 2004/026323 A (BARROS, SILVIA, BERLANGA, DE, MORAES;  
FUNDACAO DE AMPARO A PESQUISA DO) 1 April 2004 (2004-04-01)
- D2: ZHU A ET AL: "Study of tea polyphenol as a reversal agent for carcinoma cell  
lines' multidrug resistance (study of TP as a MDR reversal agent)" NUCLEAR  
MEDICINE AND BIOLOGY, ELSEVIER SCIENCE PUBLISHERS, NEW YORK,  
NY, US, vol. 28, no. 6, August 2001 (2001-08), pages 735-740, XP004301003  
ISSN: 0969-8051
- D3: WO 2004/053097 A (MEDICAL COLLEGE OF GEORGIA RESEARCH  
INSTITUTE, INC; HSU, STEPHEN; SCHU) 24 June 2004 (2004-06-24)
- D4: PRONIUK S ET AL: "Preformulation study of epigallocatechin gallate, a  
promising antioxidant for topical skin cancer prevention" JOURNAL OF  
PHARMACEUTICAL SCIENCES, AMERICAN PHARMACEUTICAL  
ASSOCIATION. WASHINGTON, US, vol. 91, no. 1, January 2002 (2002-01),  
pages 111-116, XP002270297 ISSN: 0022-3549
- D5: MUKHTAR H ET AL: "GREEN TEA POLYPHENOLS INDUCE APOPTOSIS  
AND ALTER THE PROGRESSION OF CELL CYCLE IN HUMAN EPIDERMAL  
CARCINOMA CELLS A431" PROCEEDINGS OF THE AMERICAN  
ASSOCIATION FOR CANCER RESEARCH AND AMERICAN SOCIETY OF  
CLINICAL ONCOLOGY, XX, XX, vol. 38, March 1997 (1997-03), page 580,  
XP000997348
- D6: LINDEN K ET AL: "Chemoprevention of non-melanoma skin cancer: Experience  
with a polyphenol from green tea" EUROPEAN JOURNAL OF CANCER,  
PERGAMON PRESS, OXFORD, GB, vol. 38, February 2002 (2002-02), page  
S24, XP004367780 ISSN: 0959-8049
- D7: WO 01/51048 A (COLOR ACCESS, INC) 19 July 2001 (2001-07-19)
- D8: MCCARTY M F: "POLYPHENOL-MEDIATED INHIBITION OF AP-1  
TRANSACTIVATING ACTIVITY MAY SLOW CANCER GROWTH BY  
IMPEDING ANGIOGENESIS AND TUMOR INVASIVENESS" MEDICAL  
HYPOTHESES, EDEN PRESS, PENRITH, US, vol. 50, June 1998 (1998-06),  
pages 511-514, XP000957651 ISSN: 0306-9877
- D9: CAO Y ET AL: "ANGIOGENESIS INHIBITED BY DRINKING TEA" NATURE,

MACMILLAN JOURNALS LTD. LONDON, GB, vol. 398, 1 April 1999 (1999-04-01), page 381, XP000953295 ISSN: 0028-0836

D10: US 2003/166583 A1 (YOA-PU HU OLIVER ET AL) 4 September 2003  
(2003-09-04)

2. It is already known from the prior art that polyphenols isolated from e.g. green tea, especially derivatives of catechin (or catechol) can be used in the treatment and prevention of different skin disorders, especially skin cancer (cf. D2 and D4 to D10; parts indicated in the search report). The subject-matter of present claims 1 to 29 and 35 therefore lacks the necessary novelty over the prior art and the requirements of Article 33 (2) PCT have not been fulfilled.
3. Since the effect of polyphenols isolated from green tea on cancerous cells is known, it cannot be considered inventive to combine it with other already known agents used for the same indication, especially since no surprising or unexpected effect has been shown. The requirements of Article 33 (3) EPC have therefore not been fulfilled for claims 1-35.

## **Section VI**

### **Certain documents cited**

#### **Certain published documents**

Application No Patent No	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO2004/026323	01/04/04	17/09/03	18/09/02
WO2004/053097	24/06/04	10/12/03	10/12/02

## **Section VIII**

### **Certain observations on the international application**

The subject-matter of claims 21-26 disclose certain amounts of polyphenols. It is unclear whether these amounts are relative to the complete compositions or relative

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2004/011300

the other active ingredients.